

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

CIVIL DIVISION

BUILDING AND PROPERTY LIST

VCAT REFERENCE NO. BP18/2015

CATCHWORDS

Domestic building – practice and procedure – amendment of application by filing Amended Points of Claim prior to application being processed by the Tribunal – whether application for joinder of another party required – ss60 and 127 of the *Victorian Civil and Administrative Tribunal Act 1998*

FIRST APPLICANT	Anthony Conduit
SECOND APPLICANT	Julie Conduit
FIRST RESPONDENT	Metricon Homes Pty Ltd (ACN 005 108 752)
SECOND RESPONDENT	Structural Works Pty Ltd (ACN 078 600 129)
WHERE HELD	Melbourne
BEFORE	Deputy President C Aird
HEARING TYPE	Directions hearing
DATE OF HEARING	17 March 2015
DATE OF REASONS	19 March 2015
CITATION	Conduit v Metricon Homes Pty Ltd (Building and Property) [2015] VCAT 296

ORDER

Under s127 of the *Victorian Civil and Administrative Tribunal Act 1998* I amend the application filed by the applicants on 5 January 2015 to include Structural Works Pty Ltd (ACN 078 600 129) as the second respondent with effect from 19 January 2015.

DEPUTY PRESIDENT C AIRD

APPEARANCES:

For Applicants	Mr R Scheid of Counsel
For First Respondent	Mr M Attard, solicitor
For Second Respondent	Mr C Terrill, solicitor

REASONS

- 1 At a directions hearing on 17 March 2015 I made the following order:
For the avoidance of doubt I join as the second respondent to this proceeding Structural Works Pty Ltd (ACN: 078 600 129) with effect from **19 January 2015**.
- 2 Although not required under s117 of the *Victorian Civil and Administrative Tribunal Act 1998* ('the VCAT Act') to provide written reasons for interlocutory decisions, I indicated that I would provide short reasons in this particular instance.

Background

- 3 On 5 January 2015 the applicant owners filed an application together with Points of Claim. In both the application and the Points of Claim only the first respondent was named. At 9:38am on 19 January 2015 the Tribunal received Amended Points of Claim from the applicants' lawyers under cover of the following email:

Dear Registrar

I refer to the Application filed on 5th January 2015 and subsequent telephone conversations with [VCAT staff member] of your office this morning.

I advise that the incorrect version of the Application was filed. The Second Respondent was omitted from the Application and Points of Claim. Accordingly we now enclose Amended Points of Claim together with ASIC Search of Structural Works Pty Ltd and would be pleased if Structural Works Pty Ltd could be joined as the Second Respondent in proceedings. (sic)

Should you have any queries please do not hesitate to contact me.
- 4 This email and the Amended Points of Claim were received before the application was processed and served by the Tribunal. The Amended Points of Claim were processed by the Tribunal as an amended application and Structural Works Pty Ltd ('Structural Works') was recorded as the second respondent.
- 5 Notice of Application and Notice of Date of Directions Hearing were served on Structural Works, by the Tribunal, by letter dated 30 January 2015 addressed to its registered office. From the file it appears this letter was posted the same day by ordinary mail.
- 6 There is a file note on the file to the effect that a representative of Structural Works telephoned the Tribunal on 10 February to advise that he had received the Notice of [Directions] Hearing, but had not received a copy of the application which, it was recorded, was then emailed to it.

7 By facsimile dated 10 February 2015 solicitors for Structural Works wrote to the Tribunal advising that their client had received a copy of the Notice of Directions Hearing and a document which *purports to name it as the second respondent...* Further, that:

The applicants' representative has confirmed that an application has not been made to join Structural Works Pty Ltd as a party to the proceeding.

We refer to section 60 of the VCAT Act relevant to the joinder of parties. Our enquiries reveal that:

1. VCAT has not made an order joining Structural Works Pty Ltd as a party to the proceeding; and
2. the applicants have not issued an application seeking to join Structural Works Pty Ltd as a party to the proceeding.

Structural Works requests that VCAT remove any reference to Structural Works Pty Ltd as being a second respondent to the above proceeding in the circumstances.

It is to be noted in paragraph 9 of the applicants' claim that an Occupancy Permit was issued on 21 January 2005. Accordingly, any claim against Structural Works would be statute barred in any event.

We request that:

1. VCAT confirm that there will be no further reference to Structural Works Pty Ltd as a second respondent to the proceeding without further order of the tribunal; and
2. Structural Works Pty Ltd is not required to attend the directions hearing on 17 March 2015 at 2.45 p.m.

8 An email was then received from the applicants' solicitors enclosing a letter dated 11 February 2015 in which they set out their understanding of the history of the proceeding:

The letter from [Structural Works' solicitor] is incorrect.

1. On the 5th January 2015 Slater and Gordon filed an Application together with Points of Claim against Metricon Homes Pty Ltd. The Application and Points of Claim filed was the incorrect version.
2. On the 19th January 2014 (sic) Ms Priscilla Druder Senior Legal Assistant from Slater & Gordon spoke to [VCAT customer service] over the telephone and sent a subsequent email. Ms Druda was advised that the Application and Points of Claim filed on the 5th January 2015 had not been processed.
3. Ms Druda enquired how the error could be corrected and was advised to resubmit Amended Points of Claim and it was not necessary to lodge a new Application form as this would attract a separate fee. Ms Druda was advised to file a company search with the amended points of claim in accordance with Rule 4.05A(1) (for the purposes of 67(1)(b) of the Victorian Civil and Administrative

Act. The Directions hearing notice of 30 January 2013 (sic) specifically acknowledges receipt of the Application listing Structural Works Pty Ltd. (sic)

4. In accordance with the advice of registry Ms Druda emailed the Statement of Claim and the company extract. I now enclose copy of the email forwarded to VCAT on the 19 January 2014 (sic). You will note that the email clearly refers to Structural Works Pty Ltd.
 5. Therefore the Application and Points of Claim referring to the Second Respondent was accepted by the Tribunal and the Second named Respondent is an appropriate party to these proceedings.
- 9 After referring the correspondence to a Tribunal Member, the Registry advised the parties that:
- Please be advised your correspondence was referred to a Tribunal Member who has asked for me to advise you that the Applicant in the above proceeding has advised of an amended application naming the Second Respondent, Structural Works Pty Ltd (ACN 078 600 129).
- The matter will be raised at the Directions Hearing listed on 17 March 2015. Additionally the Tribunal Member informs that the Second Respondent should be in attendance at this Directions Hearing. (sic)
- 10 On 13 March 2015 the applicants filed affidavits by Robert Auricchio, solicitor and Priscilla Druda, Legal Assistant, both sworn on 13 March 2015.
 - 11 At the commencement of the directions hearing I indicated to the parties, by reference to the file, what had seemingly happened in relation to receipt of the amended Points of Claim, noting that the Structural Works had been included as the second respondent on the Tribunal's electronic case management system when the application was processed. It is apparent that the Tribunal processed the amended Points of Claim as an amended application.
 - 12 This is a clear case where the applicants' solicitors have sought to amend the application within a very short time of it being filed, and prior to it being processed by the Tribunal. They sought the advice of the Tribunal as to how that could be achieved. Unfortunately, there seems to have been a miscommunication or misunderstanding by which the applicants should not be prejudiced.
 - 13 Having regard to the Tribunal's obligations under ss97 and 98 of the VCAT Act and insofar as it is necessary to do so, I will order that the application form received on 5 January 2015 be amended to formally identify Structural Works as the second respondent with effect from 19 January 2015, the date on which the amended Points of Claim were received. This order will be made under s127 of the VCAT Act which empowers the Tribunal to amend any document in a proceeding *on the application of a party or on the Tribunal's own initiative*.

- 14 Further, I confirm the order made at the directions hearing, that for the avoidance of doubt Structural Works is joined as the second respondent to the proceeding.

DEPUTY PRESIDENT C AIRD